

UNITED STATES DEPARTMENT OF AGRICULTURE

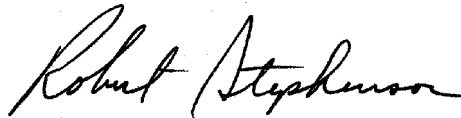
Farm Service Agency
Washington, DC 20250

Notice EQ-108

For: State and County Offices

**Determining Which FSA Actions Are Undertakings
Under the National Historic Preservation Act (NHPA)**

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

**A
Background**

The Federal Government:

- recognizes the value of irreplaceable prehistoric and historic resources
- is committed to protecting them from damage.

Historic properties are the physical evidence of our past, providing us with the means to examine and study firsthand the events and processes that have shaped our nation. Many are unique and irreplaceable. Their value rests in what they offer us in terms of the following:

- scientific information
- interpretive opportunities
- cultural identity.

A number of laws apply to the management and protection of cultural resources, most notably the NHPA of 1966, as amended (16 U.S.C. 470 et. seq.). Key provisions of NHPA direct Federal agencies to:

- establish historic preservation programs to identify, evaluate, and protect important sites under their jurisdiction
- take into account the impacts of Agency projects on significant historic properties.

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Disposal Date

July 1, 2002

Distribution

State Offices; State Offices relay to County
Offices

Notice EQ-108

1 Overview (Continued)

A

Background (Continued)

NHPA, Section 106 instructs Federal agencies with direct or indirect jurisdiction over a Federal or Federally funded undertaking to take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places.

CEPD, in discussion with other Agency divisions:

- prepared a detailed list (Exhibit 1) of Agency activities
- evaluated these activities based on their potential to impact historic properties.

CEPD believes that Exhibit 1 will save State and County Offices significant time and effort by exempting many of our actions from routine review by the State Historic Preservation Officer (SHPO).

B

Purpose

This notice:

- clarifies and obsoletes Notice EQ-106
- lists 3 categories (Exhibit 1) of projects as follows:
 - Category 1, nonundertakings
 - Category 2, potential undertakings
 - Category 3, undertakings

Note: These categories are defined in paragraph 2. Actions listed for CRP practices in Exhibit 1 do not indicate cost share eligibility. See 2-CRP to determine cost share eligibility.

- identifies FSA and CCC projects categorized as nonundertakings which require no further consideration of historic properties or consultation.
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2 Undertakings and Nonundertakings

A

Definition of Undertakings

An undertaking means any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency including those:

- carried out by or on behalf of the Agency
- carried out with Federal financial assistance
- requiring a Federal permit, license, or approval
- subject to State or local regulation administered pursuant to a delegation or approval of a Federal agency.

Undertakings must be evaluated to determine the potential to cause effects to historic properties.

B

Implementing Regulation

Implementing regulation 36 CFR 800.3 states that it is the agency's responsibility to determine whether a project is an undertaking. If it is not an undertaking, or is an undertaking that has no potential to affect historic properties, then the agency has no further responsibility under Section 106.

The 36 CFR 800.3 authority is a unilateral Agency decision made without requiring consultation with SHPO, Tribal Historic Preservation Officer (THPO), or other interested parties.

C

Fulfilling NHPA Mandates

To assist State and County Offices with fulfilling NHPA mandates, the National Office:

- reviewed the Agency's activities
 - prepared a list of activities and their potential to impact historic properties. See Exhibit 1.
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Continued on the next page

2 Undertakings and Nonundertakings (Continued)

C

Fulfilling NHPA Mandates (Continued)

The activities are cited as:

- **Category 1, nonundertakings** which are those that have no potential to affect or alter historic properties
- **Category 2, potential undertakings** which are those that may affect historic properties unless they meet 1 of the following exemptions:

- the project will not exceed the depth, extent, or kind of previous cultivation or disturbance

Note: This is usually based on the depth of the existing plow zone or level of previous construction disturbance.

- the land has not been previously cultivated, and the project will result in no ground disturbance
- the project will not impact any structures that exceed 50 years of age or impact any historic landscape or traditional cultural place or property

Note: If any of these situations apply, no further historic property considerations are needed.

- **Category 3, undertakings** which are those that have a high potential to affect historic properties.

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2 Undertakings and Nonundertakings (Continued)

C

Fulfilling NHPA Mandates (Continued)

Projects that:

- fall into Category 1 or Category 2 and meet 1 of the Category 2 exemptions in this subparagraph, require no further historic property consideration except documentation in the file
- fall into Category 2, and do not meet the nonundertaking criteria for Category 2 exemptions as discussed in this subparagraph, or Category 3 require additional compliance with Section 106. Section 106 steps include the following.

Step	Action
1	Consulting with SHPO/THPO to determine the Area of Potential Effect.
2	Consulting with other interested parties.
3	Gathering information, including performing literature and file review and, if needed, a field check, to determine whether any known historic properties are in the project area.
4	Submitting information from steps 1-3 to SHPO/THPO for review.
5	If historic properties are found, developing mitigation measures to reduce the adverse impacts.

Any project that does not appear in Exhibit 1 should be dealt with on a case-by-case basis. For assistance, contact your State Environmental Coordinator.

Exhibit 1:

- enables County and State Offices to:
 - streamline their historic preservation compliance activities
 - avoid needless consultation and historic property reviews
 - will be reviewed periodically to:
 - assess its effectiveness
 - ensure that actions have been correctly categorized.
-

3 Action

A State and County Office Responsibilities

State and County Offices shall:

- use Exhibit 1 to determine whether an action is an undertaking
- for those determined nonundertakings, document the determination and reasons for the determination in the individual producer and/or borrower file for each project

Notes: This documentation is necessary should any questions arise.

FSA has determined, at the National Office level, that the following nonundertakings will require no further review. This notice is sufficient documentation to fulfill the NHPA documentation requirements. No further documentation is needed in the case or producer files.

- Farm Loan Programs
 - closing costs for Farm Operating and Farm Ownership loans
 - loan deferral
 - rescheduling debt
 - restructuring debt
 - debt write down
 - debt set aside
 - debt consolidation

Continued on the next page

3 Action (Continued)

A
State and
County Office
Responsibilities
(Continued)

- Farm Programs
 - dairy indemnity and market loss payments
 - marketing assistance loans and loan deficiency payments including minor oilseed, soybean, feed grain, rice, and wheat
 - cotton loans and deficiency payments
 - wool and mohair payments
 - small hog operation payments
 - sugar payments
 - crop disaster program payments
 - Agricultural Marketing Transition Act payments
 - noninsured crop disaster assistance program payments
 - tobacco and peanut allotments
 - for projects that are Category 2 that do not meet the exemptions discussed in subparagraph 2 C or Category 3, follow regular Section 106 consultation and review
- Note:** Section 106 steps include:
- consulting with SHPO/THPO and other interested parties
 - gathering information
 - developing mitigation measures to reduce the adverse impacts.
- use RD 1940-20, FmHA 1940-21, and FmHA 1940-22, as appropriate, or FSA-850 for Farm Storage Facility Loans as a basis for documentation for programs other than those listed in this subparagraph until a new combined form is completed as part of the CEPD environmental regulation revision

Continued on the next page

3 Action (Continued)

A

**State and
County Office
Responsibilities
(Continued)**

- in some cases, use documentation provided by other Federal agencies or contractors

Note: This documentation may be used to fulfill requirements under the National Environmental Policy Act and NHPA if FSA believes that it is sufficient and accurate.

- contact the State Environmental Coordinator or the Federal Preservation Officer (FPO), Kathleen Schamel, at 202-690-1164, for assistance with Section 106 review and consultation.
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B

**National Office
Responsibilities**

The National Office shall:

- assist State Offices, as necessary, in working with SHPO or THPO if questions arise
 - be available to explain how each determination of undertaking was reached, as needed
 - revise the list of undertakings as needed.
-

Determining Which FSA Actions Are Undertakings Under NHPA

Category 1, Nonundertaking (nonground disturbing beyond the plow zone or previously disturbed area; no potential to impact historic properties).

Category 2, Potential Undertaking (potentially ground disturbing; potential to impact historic properties).

Category 3, Undertaking (ground disturbing; potential to impact historic properties).

	Category 1	Category 2	Category 3
Loan Making Division			
<i>Direct & Guaranteed Loans</i>			
Farm Ownership			
Closing costs	x		
Construction, addition to existing structure		x	
Construction, disturbed areas ^{1/}		x	
Construction, nondisturbed areas			x
Conservation Easements	x		
Develop farmland		x	
Enlarge existing farm		x	
Farmland purchase, new ground disturbance planned			x
Farmland purchase, no new ground disturbance planned	x		
Irrigation/wells		x	
Improve/repair, structures 50 years old or older		x	
Improve/repair, structures under 50 years old	x		
Refinance debt	x		
Replacement buildings		x	
Soil/water conservation ^{2/}		x	

^{1/} Disturbed ground is any area that has had previous agricultural use or construction including areas with farm buildings. The disturbance usually goes to the bottom of the plow zone or depth of previous construction.

^{2/} Soil and water conservation practices should be consistent with ACP types of practices.

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Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Operating Loans			
Annual operating costs (seed, livestock, equipment, insurance, etc.) with no construction/demolition in plan including 7-year equipment loans ^{3/}	x		
Annual operating costs, including construction or demolition		x	
Closing costs	x		
Drain tile replacement		x	
Family subsistence/living expense	x		
Fencing	x		
Labor	x		
Refinancing debt	x		
Soil/water development ^{4/}		x	
Trees (bare roots), perennial planting	x		
Trees (large root balls), perennial planting		x	
Emergency Loan Assistance			
Living expenses	x		
Production costs with no construction or demolition	x		
Production costs, including construction or demolition		x	
Refinance debt	x		
Reorganize farm operations	x		
Restore/replace property		x	
Youth Project Loans			
Income producing projects	x		

^{3/} If the equipment loan is for irrigation equipment, then Section 106 review is required.

^{4/} Soil and water practices should be consistent with ACP types of practices. Practices such as wells or pumps may be undertakings.

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Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Loan Servicing and Property Management Division			
Conservation easement with no construction	x		
Conservation easement with construction		x	
Debt set aside	x		
Deferral	x		
Inventory property disposal with easements/covenants	x		
Inventory property disposal without protective easements/covenants		x	
Loan consolidation	x		
Partial release	x		
Reamortization	x		
Rescheduling debt	x		
Restructuring	x		
Subordination, new ground disturbance planned, or new construction planned		x	
Subordination, no new ground disturbance planned, or no new construction planned ^{5/}	x		
Transfer/assumption		x	
Writing down debt	x		

^{5/} Disturbed ground is any area that has had previous agricultural use or construction including areas with farm buildings. The disturbance usually goes to the bottom of the plow zone or depth of previous construction.

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Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Price Support Division			
<i>Farm Storage Facility Loan Program</i>			
Storage facility, added capacity <u>6/</u>	x		
Storage facility, disturbed areas <u>7/</u>	x		
Storage facility, undisturbed areas			x
<i>Lamb Meat Adjustment Assistance Program</i>			
Lamb meat adjustment assistance, facility improvement		x	
Lamb meat adjustment assistance, no facility improvement	x		
<i>Marketing Assistance Loans and Loan Deficiency Payments</i>			
Feed grain support	x		
Minor oilseed support	x		
Rice support	x		
Soybean support	x		
Wheat support	x		
<i>Cotton Loan and Loan Deficiency Payments</i>	x		
<i>Dairy Indemnity Program</i>	x		
<i>Dairy Market Loss Assistance Program</i>	x		
<i>Wool/Mohair Program</i>	x		
<i>Small Hog Operations Program</i>	x		
<i>Sugar Program</i>	x		

6/ Adding capacity to a single, existing structure, with no additional new ground disturbance or demolition to structures 50 years old or older.

7/ Disturbed ground is any area that has had previous agricultural use or construction including areas with farm buildings. The disturbance usually goes to the bottom of the plow zone or depth of previous construction.

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Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Conservation & Environmental Programs Division 8/			
Access road ✓			x
Animal trails & walkways* ✓		x	
Annual food plots +	x		
Bareland planting or planting without site preparation ✓	x		
Bedding ✓		x	
Bridges +		x	
Brush management ✓		x	
Chiseling & subsoiling if previously tilled ✓	x		
Chiseling & subsoiling if not previously tilled ✓			x
Chute +			x
Clean tilling firebreaks +	x		
Conservation crop rotation ✓	x		
Construction of structures +			x
Contour farming ✓	x		
Contour grass strips	x		
Control of competitive & other undesirable species ✓		x	
Cover and green manure crop ✓	x		
Critical area planting* ✓		x	
Dam/diversion*			x
Dam/floodwater retarding*			x
Dam/multiple purpose* ✓			x
Debt for Nature, no ground modification	x		
Debt for Nature, ground modification		x	

8/ Includes all CEPD activities including CRP, ACP, ECP.

✓ ACP practice; * ECP practice; + CRP practice.

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Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Conservation & Environmental Programs Division (Continued) 8/			
Dike ✓ +			x
Ditch +			x
Diversion * ✓ +			x
Drop spillway +			x
Earthmoving for dam, levee, dugout, dike +			x
Eligible and suitable plantings +	x		
Eligible seed purchase +	x		
Erosion control measures ✓		x	
Establish/maintain wildlife food plot +	x		
Excavation +			x
Fence, install * ✓ +	x		
Fence, repair * ✓ +	x		
Fence, replace* ✓ +	x		
Field borders ✓	x		
Filter strips ✓	x		
Firebreak installation ✓		x	
Fish stream improvement ✓			x
Forage harvest management ✓	x		
Forb planting +	x		
Grade stabilization structure * ✓			x

8/ Includes all CEPD activities including CRP, ACP, ECP.

✓ ACP practice; * ECP practice; + CRP practice.

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Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Conservation & Environmental Programs Division (Continued) 8/			
Grading, leveling, shaping, filling, previously disturbed area +	x		
Grading, leveling, shaping, filling, not previously disturbed area +			x
Grafting or similar practices +	x		
Grapevine removal ✓	x		
Grassed waterway * ✓		x	
Grass planting +	x		
Grazing land mechanical treatment ✓			x
Heavy use area protection ✓		x	
Heavy site preparation, planting, direct seeding ✓			x
Herbicide purchase/application +	x		
Hillside ditches * ✓			x
Insecticide purchase/application +	x		
Integrated crop management ✓	x		
Irrigation canal or lateral*			x
Irrigation field ditch*			x
Irrigation land leveling*			x
Irrigation pit or regulating reservoir*			x
Irrigation storage reservoir*			x
Irrigation structure +			x
Irrigation system/sprinkler * ✓		x	
Irrigation system/surface & subsurface * ✓		x	

8/ Includes all CEPD activities including CRP, ACP, ECP.

✓ ACP practice; * ECP practice; + CRP practice.

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Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Conservation & Environmental Programs Division (Continued) 8/			
Irrigation system/tailwater recovery*		x	
Irrigation system/trickle (drip) * √		x	
Irrigation water conveyance/ditch & canal lining*		x	
Irrigation water conveyance/pipeline*		x	
Irrigation water management √	x		
Land smoothing* √			x
Legume planting +	x		
Light site preparation, planting, direct seeding √		x	
Line waterway or outlet* √		x	
Lining +		x	
Livestock crossing facilities +		x	
Medium site preparation, planting, direct seeding √		x	
Mineral purchase/application +	x		
Mulching* √	x		
Netting for hardwoods +	x		
Nutrient management √ +	x		
Obstruction removal * √ +			x
Other vegetation for habitat, food, or cover planting +	x		
Outlet +			x

8/ Includes all CEPD activities including CRP, ACP, ECP.

√ ACP practice; * ECP practice; + CRP practice.

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Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Conservation & Environmental Programs Division (Continued) 8/			
Pasture & hayland planting * √	x		
Permanent native grasses +	x		
Permanent water source for wildlife +		x	
Pest management √	x		
Pesticide containment facility √			x
Pipe +			x
Pipe drop +			x
Pipeline * √		x	
Pipelines, watering facilities +		x	
Plastic tubes for hardwoods +	x		
Plastic mulch +	x		
Plugging artesian wells √		x	
Pond * √			x
Pond sealing & lining * √	x		
Precision land farming √			x
Prescribed burning √		x	
Pruning √	x		
Pumped well drain*		x	
Range planting √		x	
Release for forestry improvement √	x		

8/ Includes all CEPD activities including CRP, ACP, ECP.

√ ACP practice; * ECP practice; + CRP practice.

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Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Conservation & Environmental Programs Division (Continued) 8/			
Residue management ✓	x		
Residue management, seasonal ✓	x		
Riparian buffers	x		
Roads +			x
Rock filled infiltration trenches +		x	
Rock barrier*		x	
Roof runoff management ✓	x		
Sediment basin*			x
Sediment structure +			x
Seedbed preparation, seeding +	x		
Seeding +	x		
Seeding, approved shrubs and trees +	x		
Seeding firebreaks, fuelbreaks, firelanes +	x		
Shrub planting, seedlings +	x		
Site preparation +			x
Spring development* ✓			x
Stand analysis for forest management planning ✓	x		
Streambank & shoreline protection ✓			x
Stripcropping/contour ✓	x		
Stripcropping/field ✓	x		
Stripcropping/wind ✓	x		
Structures, pipe, flashboard risers, gates, chutes, outlets +			x

8/ Includes all CEPD activities including CRP, ACP, ECP.

✓ ACP practice; * ECP practice; + CRP practice.

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Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Conservation & Environmental Programs Division (Continued) 8/			
Structure, water control * √			x
Subsurface drain * √ +		x	
Supplemental drip irrigation +	x		
Surface drainage/field ditch * √			x
Surface drainage/main or lateral √			x
Surface roughening * √	x		
Temporary cover +	x		
Temporary food plots +	x		
Temporary supplemental irrigation systems +		x	
Terrace* √			x
Thinning & pruning √	x		
Toxic salt reduction √	x		
Tree tubes, shelters +	x		
Tree planting, bare root +	x		
Tree planting, root ball +		x	
Tree/shrub establishment √	x		
Trough or tank* √		x	
Underground outlet * √			x
Use exclusion √	x		
Vertical drain* √			x
Waste management system √			x
Waste storage facility* √		x	

8/ Includes all CEPD activities including CRP, ACP, ECP.

√ ACP practice; * ECP practice; + CRP practice.

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Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Conservation & Environmental Programs Division (Continued) 8/			
Waste treatment lagoon*			X
Waste utilization ✓	X		
Water gaps +			X
Water harvesting catchment * ✓			X
Water, sediment control basin* ✓			X
Water spreading ✓			X
Well* ✓			X
Wetland restoration		X	
Wildlife upland habitat management ✓	X		
Wildlife watering facility*		X	
Windbreak/shelterbelt establishment ✓		X	
Windbreak/shelterbelt renovation* ✓		X	
Production, Emergencies & Compliance Division			
<i>Non-Insured Crop Disaster Assistance Program</i>	X		
<i>Agricultural Marketing Transition Act (AMTA)</i>	X		
<i>Crop Disaster Program</i>	X		

8/ Includes all CEPD activities including CRP, ACP, ECP.

✓ ACP practice; * ECP practice; + CRP practice.

Continued on the next page

Determining Which FSA Actions Are Undertakings Under NHPA (Continued)

	Category 1	Category 2	Category 3
Tobacco & Peanut Division			
Planting in previously disturbed areas ^{9/}	x		
Planting in previously undisturbed areas			x
Program Development & Economic Enhancement Division	x		
Procurement & Donations Division	x		
Kansas City Commodity Office	x		
Warehouse & Inventory Division	x		

^{9/} Disturbed ground is any area that has had previous agricultural use or construction including areas with farm buildings. The disturbance usually goes to the bottom of the plow zone or depth of previous construction.
